

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CALVIN E. BENFORD,

Plaintiff,

v.

CHICAGO BEVERAGE SYSTEMS L.L.C.,

Defendant.

No. 07 CV 06958


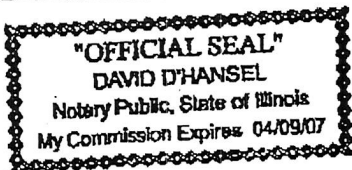
Judge Coar

Magistrate Judge Valdez

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

EXHIBIT A (part 2)

EXHIBIT A

CHARGE OF DISCRIMINATION The Privacy Act of 1974 affects this form: See Privacy act statement before completing this form. 06w1012.11		AGENCY <input checked="" type="checkbox"/> IDHR <input type="checkbox"/> EEOC		CHARGE NUMBER 2006CA0856	
Illinois Department of Human Rights and EEOC					
NAME (Indicate Mr. Ms. Mrs.) Calvin B. Benford			HOME TELEPHONE (include area code) (773) 533-2694		
STREET ADDRESS 126 N. Karlov, Apt 1		CITY, STATE AND ZIP CODE Chicago, Illinois 60624		DATE OF BIRTH 02/05/59	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (IF MORE THAN ONE LIST BELOW)					
NAME Chicago Beverage Systems		NUMBER OF EMPLOYEES, MEMBERS 15+		TELEPHONE (Include area code) (773) 826-4100	
STREET ADDRESS 441 N. Kilbourn		CITY, STATE AND ZIP CODE Chicago, Illinois 60624		COUNTY Cook	
CAUSE OF DISCRIMINATION BASED ON: AGE PERCEIVED HANDICAP				DATE OF DISCRIMINATION EARLIEST (ADEA/EPA) LATEST (ALL) 10/11/05 10/11/05 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed attach extra sheets)					
I. A. ISSUE/BASIS DISCHARGE - OCTOBER 11, 2005, DUE TO MY AGE, 46					
B. PRIMA FACIE ALLEGATIONS 1. I am 46 years old. 2. My work performance as a forklift operator met Respondent's expectations. I was Hired in 1996. 3. On October 11, 2005, I was discharged by Mike Nino (50's), Plant Supervisor. The reason cited for the discharge was because I had tested positive for cocaine use. (continued)					
I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.			SUBSCRIBED AND SWORN TO BEFORE ME ON THIS  10.12.05 NOTARY SIGNATURE MONTH DATE-YEAR		
 NOTARY SEAL			x Calvin Benford 10-12-05 SIGNATURE OF COMPLAINANT DATE I declare under penalty that the foregoing is true and correct I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief		

Complainant: Calvin I Bedford
Charge Number: 2006CA0856
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4. I do not use drugs, but I have been taken over the counter drugs for minor pains and aches. Similarly situated, younger co-workers, have tested positive for drugs and/or alcohol, but they were not discharged, but they were allowed to enter a drug rehabilitation program for the addiction.

II. A. ISSUE/BASIS

DISCHARGE – OCTOBER 11, 2005, DUE TO A PERCEIVED MENTAL HANDICAP, DRUG ADDICTION

B. PRIMA FACIE ALLEGATIONS

1. I do not, nor have I been diagnosed with a mental handicap.
2. My work performance as a forklift operator met Respondent's expectation. I was hired in 1996.
3. On September 7, 2005, I asked to submit to a drug and alcohol examination. On September 11, 2005, I was discharged by Mike Nino, Plant Supervisor. The reason cited for the discharge was because I had tested positive for cocaine.
4. I do not use any illegal drugs, but I have taken over the counter drugs for usual minor pain and aches.
5. Respondent erroneously perceived me to have mental handicap of drug addiction, which consequently resulted in me being discharged.

HMS/RCG/JJT

EXHIBIT B

EEOC Form 161 (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Mr. Calvin B. Benford
126 North Karlov #1
Chicago, IL 60624

From: Equal Employment Opportunity Commission
Chicago District Office
500 West Madison Street
Suite 2800
Chicago, Illinois 60661-2511

☐ On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

21B-2006-00072

Nola Smlth, State & Local Coordinator

(312) 886-5973

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- ☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- ☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- ☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- ☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☒ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- ☐ Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

SEP 24 2007

John P. Rowe

John P. Rowe, District Director

Enclosure(s)

(Date Mailed)

cc:

Chicago Beverage Systems